FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AJ/OCE/2019/0248**
HMCTS code	**:**	**P: CVPREMOTE**
Property	**:**	**27 Mattock Lane, London, W5 5BH**
Applicant	**:**	**27 Mattock Lane Company Limited**
Representative	**:**	**Mr Fain of Counsel**
Respondent	**:**	**Long Term Reversions (Torquay) Limited**
Representative	**:**	**Miss Cox, in house Solicitor**
Type of application	**:**	**Section 24 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal members	**:**	**Tribunal Judge I Mohabir** **Mr K Ridgeway MRICS**
Date of decision	**:**	**8 June 2021**

DECISION

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Covid-19 pandemic: description of hearing

This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

Background

1. This is an application made by the Applicant nominee purchaser pursuant to section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid for the collective enfranchisement of 27 Mattock Lane, London, W5 5BH(the "property").

2. The Respondent is the freehold owner of the property. It is a semi-detached four storey building converted into four self-contained flats arranged over the lower ground, raised ground and two upper floors. Each flats is held on a long lease. All 4 qualifying tenants are participating tenants.

3. By a notice of a claim dated 29 July 2019, served pursuant to section 13 of the Act, the Applicant exercised the right for the acquisition of the freehold of the subject property and proposed to pay a premium of £28,500 for the freehold and £1,500 for the appurtenant property, being the communal area at the front of the building providing off street parking for the tenants and the rear garden, part of which is within the demised of the basement flat. The remaining part is a communal garden for the lessees.

4. On 2 July 2019 the Respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £80,540 for the freehold and £1,000 for the appurtenant land, being the part of the rear garden demised to the basement flat. The Respondent proposed that it should retain the area at the front of the building and the remainder of the rear garden, but would grant pursuant to section 1(4)(a) of the Act permanent rights over this land commensurate with the rights enjoyed by the lessees under the leases.

5. On 16 December 2019, the Applicant applied to the Tribunal for a determination of the premium and terms of acquisition.

The issues

6. Annexed to this decision is the statement of agreed facts signed by the valuers for the Applicant and the Respondent respectively. Both

valuers agree the price for the diminution in the value of the freeholder's interest is £41,462 and there is no marriage value payable.

7. Therefore, the issues for the Tribunal to decide are:

   (a) whether the Respondent is entitled to retain the front external communal area and the rear garden (not demised to the basement flat).

   (b) If the Respondent is so entitled, the price to be paid for the appurtenant land.

   (c) whether any sum should be paid for the hope/development value of the loft and the cellar.

The hearing

8. The remote video hearing in this matter took place on 11 May 2021. The Applicant was represented by Mr Fain of Counsel. The Respondent was represented by Miss Cox, an in house Solicitor

9. Neither party asked the Tribunal to inspect the property and the Tribunal did not consider it necessary to carry out a physical inspection to make its determination.

10. The Applicant relied upon the expert report and valuation of Mr Panicos Loizides dated 26 April 2021 and the Respondent relied upon the expert report and valuation of Mr Jeremy Levy BSc (Hons) MRICS dated 26 April 2021.

Front and Rear Communal Area

11. It is trite law that the Applicant is entitled pursuant to sections 1(2)(a) and 1(3)(b) of the Act to acquire any property at the relevant date that any tenant is entitled under the terms of the lease of his flat to use in common with the occupiers of other premises.

12. It was common ground that the tenants have express rights under the terms of their leases to use the external area at the front and rear of the property. Those rights include a right of access on foot, the right of each flat to park a motor vehicle in the car parking area and a right in common for peaceful recreation in the rear garden. It was not the Respondent's case that these rights were revocable.

13. Section 1(4)(a) of the Act provides that the freeholder may grant over the additional property, or any other property, such permanent rights as will ensure that thereafter the occupier of the flat in question has

similar or the same rights enjoyed in relation to that property on the relevant date by the qualifying tenant under the terms of his lease. If so, then the Applicant is not entitled to acquire that property. The rights actually enjoyed at the relevant date must be considered under section 1(4) of the Act[1].

14. In submissions, Miss Cox asserted that the Respondent would grant the Applicant rights in relation to the communal areas at the front and rear of the property as close as possible to those enjoyed under the residential leases. It was the Respondent's intention to delineate an area of the rear garden for the lessees to use so that it could sell the remainder of the land. Paragraph 4 in Schedule 3 to the lease expressly reserved a right to the freeholder to develop the rear garden. Nothing was said about proposed right to be granted in relation to the front communal area other than to say that the lessees had no right to keep their bins there.

15. When asked by the Tribunal, Miss Cox was unable to say exactly what right the Respondent was proposing to grant in relation to the front and rear communal areas or what area of the rear garden it intended to retain, as this had "not been decided yet" nor had any plan been prepared. The only limited rights the Respondent proposed to grant to the Applicant were the three rights set out in a draft TP1 sent on 21 January 2020, none of which addressed any of these matters. Miss Cox also conceded that the draft Transfer did not contain an express right of way to allow access and egress from the property to and from the main road, which had to be granted in any event.

16. The Tribunal was satisfied that paragraphs 1, 3 and 7 in the Second Schedule to the leases expressly granted to the tenants the right to park at the front of the property, a quasi-easement to put their bins there and use of the rear garden, the common usage of which was confirmed by the photographic evidence.

17. The Tribunal accepted the submission made by Mr Fain that the right of the freeholder to rebuild contained in paragraph 4 in Schedule 3 to the leases could not be used to make a revocable right irrevocable so as to interfere with the tenants' use of the garden[2].

18. The Tribunal was satisfied that, as at the date of the hearing, no rights had in fact been proposed by the Respondent to grant equivalent rights in relation to the communal area at the front of the property dealing with the right of access to and from the building, the right of each lessee to park a vehicle there and the right to keep and use a bin in this area.

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[1] see: ***Fluss v Queensbridge Terrace Residents Ltd*** [2011] UKUT 285 (LC)

[2] see ***4-6 Trinity Church Square Freehold Ltd v Corporation of the Trinity House of Deptford Strond*** [2018] EWCA Civ 764 at paragraph 24.

Furthermore, no rights had been proposed by the Respondent in relation to the rear garden at all.

19. The Tribunal, therefore, concluded that the test contained in section 1(4)(a) of the Act had not been satisfied by the Respondent and the Applicant is entitled to acquire the communal land at the front and rear of the property.

20. As to the price to be paid for this property, the figure of £1,500 was unchallenged by the Respondent and, accordingly, the Tribunal determined that this was the purchase price.

Hope/Development Value

Loft

21. Mr Loizides contended that a hypothetical purchaser would pay nothing for the hope value of the loft space above the second floor flat whereas Mr Levy contended that such a purchaser would pay £3,750.

22. Mr Levy argued that it would be feasible to extend the second floor flat into the loft space. He estimated that the market value of the flat was £555,000. Based on sales particulars of a comparable property at Flat F, Rose Court, 11 Mattock Lane he estimated that the increased market value as a result of the loft extension would be £635,000. The estimated cost of development would be £50,000 leaving an increased value of £30,000. Of this figure, he applied a hope value of 25% resulting in his figure of £3,750.

23. The difficulty with Mr Levy's argument is that they were a matter of pure speculation and there was no evidence to support it. The Tribunal did not consider that the property at Flat F, Rose Court was comparable to the second floor flat. Mr Levy accepted in his report that no application for planning consent had been applied for by the Respondent and there was no evidence that it would be granted and, if so, on what conditions.

24. Instead, the Tribunal preferred the arguments of Mr Loizides set out in paragraph 7 in his report where he stated:

> *"The current roof structure is of a low pitch timber construction covered with tiles. There are numerous support uprights within the loft area. The loft, in my opinion, is not liveable space that can be incorporated to the top floor flat or any adjoining property. The maximum height is 2.30m for an area of approximately 2.66 sq. m. Under planning and building regulations the minimum height for liveable accommodation is 2.10m and 2.00m at staircase and landings. Any loft*

conversion under building control regulations would require the insertion of steel beams which would reduce the available height by approx. 20cm without allowing for floor coverings. Due to the minimal area which the above minimum heights can be accommodated, I consider the loft to be unable to be used or incorporated to the second floor flat for living accommodation. Furthermore, as shown in the aerial image of the building and adjoining properties, no other property of similar design has had its loft converted due to their low pitched structure. In addition, any loft development would require extensive internal reconfiguration of the second floor flat, which would reduce the usable space of the unit".

25. Accordingly, the Tribunal concluded that no hope value existed in relation to the loft space.

Cellar

26. Mr Levy argued that the cellar was not demised to the lessee of the lower ground floor flat. However, because access can only be gained through this flat, the lessee had to be regarded as a special purchaser. Although not habitable space, the cellar could be developed to provide natural light and ventilation, which would increase the value of the flat by approximately £30,000. The approximate cost of development would be £10,000. He then took 50% of the increased profit to give an additional increase in the freehold value of £10,000.

27. The Tribunal concluded that no hope or development value could be attributed to the cellar because it was in fact part of the demise of the lower ground floor flat. This was the only reasonable construction that could be placed on clause 1 of the lease of the flat by reference to the wording in the First Schedule of *"all those several rooms and premises known as the Basement Flat…shown red on the floor plan.."*. The lease plan makes express reference to the 'cellar under".

28. In addition, the only access to the cellar is from the basement flat. As such, the lease can be properly construed as including the demise of the cellar. ***Hatfield v Moss*** [1988] 2 EGLR 58 is authority for this proposition.

29. Furthermore, the Tribunal accepted the (unchallenged) evidence of Mr Loizides that the cellar has been used as part of the basement flat since at least 2008 and was marketed as such at this time. Therefore, in any event, the Tribunal was satisfied that it had become part of the demise of the basement flat by the doctrine of encroachment. Furthermore, the Respondent has never asserted any ownership rights over the cellar.

The premium

1. Accordingly, the Tribunal accepted the valuation prepared by Mr Loizides as being correct and determined the appropriate premium to be paid for the freehold interest is **£42,962.45**.

Name: Tribunal Judge I Mohabir **Date:** 8 June 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).